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DEPARTMENT OF JUSTICE

28 CFR Parts 36 and 85

Docket No. CRT 127; AG Order No. 3324-2014

Civil Monetary Penalties Inflation Adjustment - Civil Rights Division

AGENCY: Office of the Attorney General, Justice.

ACTION: Final rule.

SUMMARY: In accordance with section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, the Department of Justice is adjusting for inflation the civil monetary penalties assessed or enforced by the Civil Rights Division.

DATES: This rule is effective April 27, 2014.

FOR FURTHER INFORMATION CONTACT: Robert Hinchman, Senior Counsel, Office of Legal Policy, U.S. Department of Justice, Room 4252 RFK Building, 950 Pennsylvania Avenue, NW, Washington, DC 20530, telephone (202) 514-8059 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 101-410, 28 U.S.C. 2461 note (Adjustment Act), provides for the regular evaluation of civil monetary penalties to ensure that they continue to maintain their deterrent effect and that penalty amounts due the Federal Government are properly accounted for and collected. On April 26, 1996, section 31001 of the Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. 104-134, also known as the Debt Collection Improvement Act of 1996 (Improvement Act), amended the Adjustment Act to provide for more effective tools for government-wide collection of delinquent debt. In particular, section 31001(s)(1) of the Improvement Act amended section 4 of the

Adjustment Act to require the head of each agency to “by regulation adjust each civil monetary penalty provided by law within the jurisdiction of the Federal agency” and to “publish each such regulation in the Federal Register” not later than 180 days after enactment of the Debt Collection Improvement Act of 1996, and at least every four years thereafter. Subsection (s)(1) also added a new section 7 to the Adjustment Act providing that any increase in a civil monetary penalty made pursuant to that Act shall apply only to violations that occur after the date the increase takes effect. Subsection (s)(2) of the Improvement Act provides that the first adjustment of a civil monetary penalty made pursuant to the amendment in subsection (s)(1) may not exceed 10 percent of such penalty.

In compliance with these statutory requirements, the Department of Justice published a rule on February 12, 1999 (64 FR 7066), adjusting the immigration-related civil monetary penalties, and a second rule on August 30, 1999 (64 FR 47099), adjusting the other civil monetary penalties assessed or enforced by the Department within its areas of responsibility (codified in 28 CFR parts 36 and 85).

The amounts of the adjustments are determined according to a formula set forth in the Adjustment Act, Pub. L. 101-410. The statutory formulas for the inflation adjustment calculations are set forth in 28 C.F.R. 85.2, including the applicable “rounder” (or increment) used for calculations based on the amount of the current penalty. For example, the applicable “rounder” for a current \$15,000 civil penalty amount is \$5,000. This means that there would be no adjustment of the current amount if the raw inflation adjustment calculation shows an increase of less than \$2,500, but the civil penalty amount would be increased by the full \$5,000 increment if the raw inflation adjustment is above the rounding threshold.

Adjustments made in this rule for civil monetary penalties relating to civil rights

By this rule, the Department of Justice is making adjustments for inflation in the civil monetary penalties assessed or enforced by the Civil Rights Division.¹ The Department will separately publish a rule adjusting the other civil monetary penalties assessed or enforced by the Department.

Several civil monetary penalties were previously adjusted in 1999: civil monetary penalties in the amounts of \$55,000 and \$110,000 under the Americans With Disabilities Act, 42 U.S.C. 12188(b)(2)(C); civil monetary penalties in the amounts of \$11,000 and \$27,500 under the Freedom of Access to Clinic Entrances Act of 1994, 18 U.S.C. 248(c)(2)(B), and civil monetary penalties in the amounts of \$55,000 and \$110,000 under the Fair Housing Act of 1968, 42 U.S.C. 3614(d)(1)(C). However, this rule is also adjusting for the first time the civil monetary penalties under the Servicemembers Civil Relief Act, 50 U.S.C. App. 597(b)(3), as amended in 2010, and two penalties imposed under the Freedom of Access to Clinic Entrances Act of 1994, 28 U.S.C. 248(b), which had not previously been adjusted.

The adjustments in the civil monetary penalties under this rule will take effect in 2014. In accordance with the Act, the adjustments made by this rule are based on the Bureau of Labor Statistics' Consumer Price Index for June of the calendar year preceding the year of adjustment, that is, the amount for June 2013. The inflation factor from June 1999 (166.2), the year of adjustment for the previously-adjusted civil monetary penalties, to June 2013 (233.504) is

¹ In addition to the civil monetary penalties addressed in this rule, the Civil Rights Division's Office of Special Counsel for Immigration-Related Unfair Employment Practices also has enforcement authority with respect to violations of section 274B of the Immigration and Nationality Act (INA), 8 U.S.C. 1324b. The Department most recently made adjustments to penalties under section 274B as part of a joint rule published with the Department of Homeland Security on February 26, 2008 (73 FR 10130). During the calculation of inflation adjustments for this rule, it was determined that neither the civil monetary penalty amounts under INA section 274B that were adjusted in 2008 nor the civil monetary penalty amounts under INA section 274B that were not eligible for adjustment in 2008 meet the threshold for adjustment at this time.

40.5%. Applying that factor, and the applicable “rounders,” this rule adjusts previously adjusted civil monetary penalty amounts as follows:

Current Amount	Raw Inflation Calculation	Rounder	Inflation Adjustment	Adjusted Civil Penalty Amount
\$11,000	\$4,455	\$5,000	\$5,000	\$16,000
\$27,500	\$11,136	\$5,000	\$10,000	\$37,500
\$55,000	\$22,273	\$5,000	\$20,000	\$75,000
\$110,000	\$44,545	\$10,000	\$40,000	\$150,000

Two civil monetary penalties in the amount of \$15,000 imposed under the Freedom of Access to Clinic Entrances Act of 1994 were not adjusted in 1999 because they did not meet the threshold for adjustment at that time. The inflation factor from June 1994 (148.0), the year of enactment, to June 2013 (233.504) is 57.8%. Applying that factor for the current \$15,000 civil penalty amounts, the raw inflation calculation is \$8,666, above the applicable “rounder” of \$5,000. However, as this is the first adjustment, the increase is subject to a 10% cap as provided by statute for first adjustments. (Sec. (s)(2) of the Adjustment Act.) Accordingly, these civil penalty amounts are being increased from \$15,000 to \$16,500.

Finally, in 2010 Congress amended the Servicemembers Civil Relief Act to add two civil monetary penalties, and the inflation factor from June 2010 (217.965) to June 2013 (233.504) is 7.1%. This rule adjusts these penalties for the first time. (Although these adjustments are subject to a 10% cap for a first-time adjustment, the actual inflation adjustment is less than 10%.)

Current Amount	Raw Inflation Calculation	Rounder	Inflation Adjustment	Adjusted Civil Penalty Amount
\$55,000	\$3,921	\$5,000	\$5,000	\$60,000
\$110,000	\$7,842	\$10,000	\$10,000	\$120,000

In each case, the adjusted civil penalty amounts are applicable only to violations occurring after the

date the increase takes effect. See 28 U.S.C. 2461 note. Therefore, violations occurring before April 28, 2014, are subject to the civil monetary penalty amounts set forth in the Department's existing regulations in 28 CFR parts 36 and 85 (or as set by statute if the amount has not yet been adjusted by regulation).

Other agencies are responsible for the inflation adjustments of certain other civil monetary penalties that the Department's litigating components bring suit to collect. The reader should consult the regulations of those other agencies for any inflation adjustments to those penalties.

Administrative Procedure Act, 5 U.S.C. 553

The Attorney General finds that good cause exists under 5 U.S.C. 553(b)(3)(B) for immediate implementation of this final rule without prior notice and comment. This rule is a nondiscretionary ministerial action to conform the amount of civil penalties assessed or enforced by the Department of Justice to the statutorily mandated ranges as adjusted for inflation. The Attorney General is under a legal obligation to adjust these civil penalties for inflation using a statutorily required formula. The calculation of these inflation adjustments follows the specific mathematical formula set forth in section 5 of the Adjustment Act.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this rule and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities. Only those entities that are determined to have violated Federal law and regulations would be affected by the increase in penalties made by this rule pursuant to the statutory requirement. Further, no Regulatory

Flexibility Act analysis is required for this rule because publication of a notice of proposed rulemaking was not required for it.

Executive Orders 12866 and 13563 - Regulatory Review

This regulation has been drafted and reviewed in accordance with Executive Order 12866 (“Regulatory Planning and Review”), section 1(b) (“The Principles of Regulation”), and in accordance with Executive Order 13563 (“Improving Regulation and Regulatory Review”), section 1 (“General Principles of Regulation”).

The Department of Justice has determined that this rule is not a “significant regulatory action” under Executive Order 12866, section 3(f), and accordingly this rule has not been reviewed by the Office of Management and Budget.

Both Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). This final rule, however, makes nondiscretionary adjustments to existing civil monetary penalties, and the Department is required to promulgate these adjustments in accordance with the formulas prescribed by statute. The Department therefore does not have the flexibility to alter the adjustments of the civil monetary penalty amounts as provided in this rule.

Executive Order 13132 - Federalism

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132

it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988--Civil Justice Reform

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. It will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

List of Subjects

28 CFR Part 36

Administrative practice and procedure, Alcoholism, Americans with disabilities, Buildings, Business and industry, Civil rights, Consumer protection, Drug abuse, Handicapped, Historic preservation, Penalties, Reporting and recordkeeping requirements.

28 CFR Part 85

Penalties.

Accordingly, for the reasons set forth in the preamble, chapter I of Title 28 of the Code of Federal Regulations is amended as follows:

**PART 36--NONDISCRIMINATION ON THE BASIS OF DISABILITY BY PUBLIC
ACCOMMODATIONS AND IN COMMERCIAL FACILITIES**

1. The authority citation for part 36 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510; 42 U.S.C. 12188(b); Pub. L. 101-410, 104 Stat. 890, as amended by Pub. L. 104-134, 110 Stat. 1321.

2. Section 36.504 is amended by revising paragraphs (a)(3)(i) and (ii) to read as follows:

§ 36.504 Relief.

(a) * * *

(3) * * *

(i) Not exceeding \$50,000 for a first violation occurring before September 29, 1999, and not exceeding \$55,000 for a first violation occurring on or after September 29, 1999, and before April 28, 2014, and not exceeding \$75,000 for a first violation occurring on or after April 28, 2014.

(ii) Not exceeding \$100,000 for any subsequent violation occurring before September 29, 1999, and not exceeding \$110,000 for any subsequent violation occurring on or after September 29, 1999, and before April 28, 2014, and not exceeding \$150,000 for any subsequent violation occurring on or after April 28, 2014.

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PART 85--CIVIL MONETARY PENALTIES INFLATION ADJUSTMENT

3. The authority citation for part 85 continues to read as follows:

Authority: 5 U.S.C. 301, 28 U.S.C. 503; Pub. L. 101-410, 104 Stat. 890, as amended by Pub. L. 104-134, 110 Stat. 1321.

4. Section 85.3 is amended by revising the introductory text and paragraph (b) to read as follows:

§ 85.3 Adjustments to penalties.

The civil monetary penalties provided by law within the jurisdiction of the respective components of the Department, as set forth in paragraphs (a) through (d) of this section, are adjusted in accordance with the inflation adjustment procedures prescribed in section 5 of the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 101-410, as follows. The adjusted penalties set forth in paragraphs (a), (c), and (d) of this section are effective for violations occurring on or after September 29, 1999.

* * * * *

(b) Civil Rights Division. (1) 18 U.S.C. 248(c)(2)(B), Freedom of Access to Clinic Entrances Act of 1994 (Nonviolent Physical Obstruction):

(i) The civil monetary penalty amount for a first order for nonviolent physical obstruction, initially set at \$10,000, is adjusted to \$11,000 for a violation occurring on or after September 29, 1999, and before April 28, 2014, and is adjusted to \$16,000 for a violation occurring on or after April 28, 2014.

(ii) The civil monetary penalty amount for a subsequent order for nonviolent physical obstruction, initially set at \$15,000, is adjusted to \$16,500 for a violation occurring on or after April 28, 2014.

(2) 18 U.S.C. 248(c)(2)(B), Freedom of Access to Clinic Entrances Act of 1994 (Other Violations):

(i) The civil monetary penalty amount for a first order other than for nonviolent physical obstruction, initially set at \$15,000, is adjusted to \$16,500 for a violation occurring on or after April 28, 2014.

(ii) The civil monetary penalty amount for a subsequent order other than for nonviolent physical obstruction, initially set at \$25,000, is adjusted to \$27,500 for a violation occurring on or after September 29, 1999, and before April 28, 2014, and is adjusted to \$37,500 for a violation occurring on or after April 28, 2014.

(3) 42 U.S.C. 3614(d)(1)(C), Fair Housing Act of 1968, as amended (Pattern or Practice Violation):

(i) The civil monetary penalty amount for a first order, initially set at \$50,000, is adjusted to \$55,000 for a violation occurring on or after September 29, 1999, and before April 28, 2014, and is adjusted to \$75,000 for a violation occurring on or after April 28, 2014.

(ii) The civil monetary penalty amount for a subsequent order, initially set at \$100,000, is adjusted to \$110,000 for a violation occurring on or after September 29, 1999, and before April 28, 2014, and is adjusted to \$150,000 for a violation occurring on or after April 28, 2014.

(4) 50 U.S.C. App. 597(b)(3), Servicemembers Civil Relief Act of 2003, as amended:

(i) The civil monetary penalty amount for a first violation, initially set at \$55,000, is adjusted to \$60,000 for a violation occurring on or after April 28, 2014.

(ii) The civil monetary penalty amount for a subsequent violation, initially set at \$110,000, is adjusted to \$120,000 for a violation occurring on or after April 28, 2014.

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March 21, 2014
Date

Eric H. Holder, Jr.
Attorney General

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